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Attorneys for HANSEN BEVERAGE COMPANY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HANSEN BEVERAGE COMPANY, a Delaware corporation, Plaintiff, v. INNOVATION VENTURES, LLC dba LIVING ESSENTIALS, a Michigan corporation, Defendant.	CASE NO. '08 CV 1166 IEG POR **COMPLAINT FOR FALSE ADVERTISING IN VIOLATION OF THE LANHAM ACT, CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200 AND 17500 AND TRADE LIBEL** **AND** **JURY TRIAL DEMAND**

CR

PREAMBLE

This case involves a seller of energy drinks who, instead of allowing its products to speak for themselves in the marketplace, resorted to false advertising and trade libel in order to try to boost its own position and diminish Hansen's. The Lanham Act and California law provide Hansen with remedies for the false advertising and trade libel that has harmed its commercial interests.

PARTIES

Plaintiffs.

1. Hansen Beverage Company is a Delaware corporation, licensed to do business in California, with its principal place of business in Corona, California.

2. Since 1992, Hansen has developed, marketed, sold, and distributed non-alcoholic beverages such as sodas, fruit juices, energy and sports drinks, smoothies, lemonades, and iced teas.

Defendant.

3. Innovation Ventures, LLC dba Living Essentials is, Hansen is informed and believes, a Michigan corporation with its principal place of business in Novi, Michigan. Living Essentials conducts business in this district.

4. Living Essentials commercially advertises and markets in interstate commerce competing energy drinks, each of which it publicly claims and represents, *inter alia*, produces five hours of energy.

JURISDICTION

5. Because this civil action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, and specifically 15 U.S.C. § 1125(a)(1)(B), this Court has jurisdiction pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

6. This Court also has subject matter jurisdiction pursuant to the provisions of 28 U.S.C. § 1332(a)(1) in that it is a civil action between citizens of different states, namely, California and Delaware and Michigan, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

7. Finally, this Court has subject matter jurisdiction over Hansen's California unfair competition and false advertising claims pursuant to 28 U.S.C. § 1338(b), in that these claims are joined with a substantial related claim under the Lanham Act and this Court also has supplemental jurisdiction over the state-law claims pursuant to 28 U.S.C. § 1367(a).

VENUE

8. Venue in this district is proper pursuant to the provisions of 28 U.S.C. § 1391(b).

MATERIAL ALLEGATIONS

Hansen.

9. Hansen's energy drinks have been extremely successful and are sold throughout the United States by more than 100,000 retail stores, including convenience stores, gas stations, supermarkets, club stores, drug stores and warehouse stores.

10. In 1997 Hansen introduced Hansen's® Energy Drinks.

11. Then, in April 2002, Hansen released the first of its popular Monster Energy® drinks. The line of Monster Energy® drinks has since grown to include the Lo-Carb Monster, Monster Khaos, Monster Assault, Monster M-80, Monster Heavy Metal, and Monster Mixxd energy drinks, which also use the Monster and Monster Energy® trademarks and similar trade dresses.

12. In 2004, Hansen introduced Lost® Energy™ Drinks and Rumba™. In 2005, Hansen introduced Joker Mad Energy™ drinks, a low-carb version of Lost® under the Perfect 10™ brand name as well as a new Lost® Five-O™ energy drink.

13. In 2006 Hansen introduced Ace™ Energy drinks and Unbound Energy® drinks.

14. Hansen's energy drinks have achieved significant success in commerce throughout the United States and are favored energy drinks for millions of customers.

Living Essentials.

15. Living Essentials' 5-HOUR *ENERGY*® drinks are competing energy-drink products that Living Essentials markets and sells in interstate commerce throughout the United States.

16. Living Essentials advertises its 5-HOUR *ENERGY*® drinks in commercial advertising across the United States.

17. Rather than engage in fair competition in the marketplace, however, and allow consumers to exercise their own choice, Living Essentials has resorted to false advertising and trade libel to attempt to promote its 5-HOUR *ENERGY*® drinks and falsely to discourage customers from using or purchasing Hansen's energy drinks.

The False Advertising Claims.

18. Indeed, the name, "5-HOUR *ENERGY*®," is, in and of itself, false and misleading precisely because it states, or at a minimum implies, that two ounces of a 5-HOUR *ENERGY*® drink produces a sustained level of "energy" for five hours. This is untruthful based on the drink's ingredients and generally accepted principles of biochemistry, pharmacology and physiology.

19. One 5-HOUR *ENERGY*® commercial states:

> Why do energy drinks make you crash? One minute you're wired up. The next you feel worse than before. The answer is large amounts of sugar and caffeine. But with 5-Hour Energy you could sail through your day with no jitters or crash. It contains B Vitamins for energy and amino acids for focus, zero sugar and only 8 calories. Drink it in seconds and in minutes you're feeling alert and productive and that feeling lasts for hours. 5-Hour Energy. Hours of energy now. No crash later. Available at these fine stores.

20. Living Essentials' claim that "with 5-HOUR *ENERGY*® you could sail through your day with no jitters or crash" is, based on the drink's ingredients and generally accepted principles of biochemistry, pharmacology and physiology, a false and misleading statement of material fact about 5-HOUR *ENERGY*®.

21. Living Essentials' claim that 5-HOUR *ENERGY*® "contains B Vitamins for energy and amino acids for focus" is, based on the drink's ingredients and generally accepted principles of biochemistry, pharmacology and physiology, false and misleading.

22. Living Essentials' claim that with 5-HOUR *ENERGY*® one can "drink it in seconds and in minutes you're feeling alert and productive and that feeling lasts for hours" is, based on the drink's ingredients and generally accepted principles of biochemistry, pharmacology and physiology, false and misleading.

23. Living Essentials' claims in this as well as additional advertisements that 5HOUR *ENERGY*™ provides "Hours of energy now. No crash later" are, based on the drink's ingredients and generally accepted principles of biochemistry, pharmacology and physiology, false and misleading.

24. Another 5-HOUR *ENERGY*® commercial states:

> Why are energy drinks bad? 12 spoons of sugar, that's bad. 200 calories, bad. Guarana, tisk, tisk. Good for a short jittery burst, then a dehabilitating crash. So don't drink energy drinks, drink 5-Hour Energy. It's not a drink, more like a sip. Well with that sip you'll feel alert and focused for hours, without the crash or jitters. It has zero sugar, only 4 calories and no guarana. 5-Hour Energy. Hours of energy now. No crash later.

25. Living Essentials' claim in this as well as additional advertisements that "you'll feel alert and focused for hours without the crash or jitters" is, based on the drink's ingredients and generally accepted principles of biochemistry, pharmacology and physiology, false and misleading.

26. Living Essentials' claim in this as well as additional advertisements that 5-HOUR *ENERGY*® provides "Hours of energy now. No crash later" is, based on the drink's ingredients and generally accepted principles of biochemistry, pharmacology and physiology, false and misleading.

27. And another advertisement claims:

> This is you after an energy drink. Unfortunately, so is this. Why do energy drinks make you crash? One minute you're wired up. The next you feel worse than before. The answer is large amounts of sugar and caffeine. That's why you should try a new liquid energy shot called 5 Hour Energy. With 5 Hour Energy, you can leave grogginess behind and sail through your day without feeling jittery, tense or, you know. That's because 5 Hour Energy contains a powerful blend of B Vitamins for energy and amino acids for focus, alertness and better mood. There is zero sugar, about as much caffeine as a cup of coffee and only 4 calories. The 2-ounce shot takes just seconds to drink and in minutes you're feeling bright, awake and productive and that feeling lasts for hours. So if your energy drink makes you crash, switch to 5 Hour Energy. Hours of energy now, no crash later. Find out if 5 Hour Energy is right for you. It's available at these fine stores, or for more information go to 5hourenergy.com.

28. Living Essentials' claims in this as well as additional advertisements that 5-HOUR *ENERGY*® provides "Hours of energy now. No crash later" are, based on the drink's

ingredients and generally accepted principles of biochemistry, pharmacology and physiology, false and misleading

29. Living Essentials' claim in this as well as additional advertisements that "with 5-HOUR *ENERGY*® you can leave grogginess behind and still do your day without feeling jittery and tense or, you know" is, based on the drink's ingredients and generally accepted principles of biochemistry, pharmacology and physiology, false and misleading.

30. Living Essentials' claim in this as well as additional advertisements that "5-HOUR *ENERGY*® contains a powerful blend of B Vitamins for energy and amino acids for focus, alertness and better mood," is, based on the drink's ingredients and generally accepted principles of biochemistry, pharmacology and physiology, false and misleading.

31. In addition, 5-HOUR *ENERGY*® conspicuously makes the following claims on each drink's container:

- "Hours of energy now"
- "No crash later"
- "Feel it in minutes • Lasts for hours"
- "Sugar free"
- "0 net carbs"

32. 5-HOUR *ENERGY*® Decaf conspicuously makes the following claims on each drink's container:

- "Hours of energy now"
- "No crash later"
- "Feel it in minutes • Lasts for hours"
- "Sugar free"
- "Decaf"
- "Only 4 calories"

33. 5-HOUR *ENERGY*® EXTRA STRENGTH conspicuously claims on each drink's container:

- "Sugar free"
- "Only 4 calories"

34. Living Essentials' claims in the quoted advertisements and/or on the product containers that 5-HOUR *ENERGY*® products provide "hours of energy now," or "sail through your day with no jitters or crash," or "in minutes you're feeing alert and productive and that

feeling lasts for hours 5-Hour Energy," or "Hours of energy now. No crash later," or "Feel it in minutes lasts for hours" are, based on 5-HOUR *ENERGY*®'s ingredients, at least as disclosed on the applicable product container labels, false and misleading based on generally accepted principles of biochemistry, pharmacology and physiology and cannot and do not produce the effects claimed.

35. Living Essentials' claims in advertisements that its 5-HOUR *ENERGY*® products make the drinker "feel alert and focused for hours, without the crash or jitters" are, based on the products' ingredients, at least as disclosed on the applicable product container labels, false and misleading, given generally accepted principles of biochemistry, pharmacology and physiology, and do not and cannot produce the effects claimed.

36. 5-HOUR *ENERGY*® Decaf's ingredients, at least as disclosed—"sugar free," "Decaf," "6 mg. of caffeine," "only 4 calories"—given generally accepted principles of biochemistry, pharmacology and physiology, do not and cannot provide "Hours of energy now," "Feel it in minutes • Lasts for hours," "No crash later," as Living Essentials claims. Those claims are further false and misleading based on the products' ingredients including, in particular, the limited amount of caffeine and sugar in the products, at least as disclosed on the applicable container labels.

37. 5-HOUR *ENERGY*® Extra Strength's claims, described in paragraphs 18-30 and 33 above, including its claim derived from the name of the product itself, are false and misleading based on the product's claims to be "sugar free" and "only 4 calories" and the product's other ingredients at least as disclosed on the applicable container labels, given generally accepted principles of biochemistry, pharmacology and physiology.

The Trade Libel.

38. Living Essentials' statements that energy drinks contain "12 spoons of sugar, that's bad. 200 calories, bad. Guarana, tisk, tisk." falsely disparages energy drinks in general that contain some or all the ingredients to which Living Essentials refers, because such statements falsely impute adverse characteristics to and consequences of such ingredients. Such statements constitute a trade libel of and/or against energy drinks in

general, including Hansen's energy drinks which fall within the class of drinks known as energy drinks.

39. Living Essentials' statements that energy drinks are "good for short jittery bursts, then a dehabilitating crash" are false and misleading statements, and by clear reference and/or inference falsely, disparage energy drinks in general, including Hansen's energy drinks which fall within the class of drinks known as energy drinks.

40. Living Essentials' statement "why do energy drinks make you crash" is false and misleading and constitutes trade libel in that by clear reference and/or by inference it falsely disparages energy drinks in general, including Hansen's energy drinks which fall within the class of drinks known as energy drinks.

41. Living Essentials' statements, "One minute you're wired up. The next you feel worse than before" are false and misleading and constitute trade libel in that, by clear reference and/or by inference they falsely disparage energy drinks in general, including Hansen's energy drinks which fall within a class of drinks known as energy drinks. Such statements suggest that energy drinks in general, including Hansen's energy drinks, contain large amounts of sugar and caffeine which produce results that 5-HOUR *ENERGY*® drinks do not despite the fact that 5-HOUR *ENERGY*® drinks contain even higher levels of caffeine than Hansen's energy drinks. Such claims about Hansen's energy drinks are in any event false and misleading.

42. Living Essentials' statement, "the answer is large amounts of sugar and caffeine" is false and misleading and constitutes trade libel in that it falsely disparages energy drinks in general, including Hansen's energy drinks which fall within the class of drinks known as energy drinks.

43. Living Essentials' statement that "with 5-HOUR *ENERGY*® you can leave grogginess behind and still do your day without feeling jittery and tense or, you know" is false and misleading and constitutes trade libel in that it falsely disparages energy drinks in general, including Hansen's energy drinks which fall under the claim of drinks known as energy drinks.

44. The statements quoted above are false and misleading statements of material fact about Living Essentials' own products and also, by clear inference, about Hansen's energy drinks, such that they are likely to influence the purchasing decisions of a substantial number of reasonable consumers and actually deceive or have the tendency to deceive a substantial segment of the reasonable consumer audience.

45. All such statements constitute false advertising that Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and also California's unfair competition law, Business & Professions Code §§ 17200 and 17500, prohibit.

46. Worse, the effect such advertising has, and will have, on reasonable consumers makes Living Essentials' false claims about itself and its false statements about Hansen energy drinks even more pernicious.

FIRST CLAIM FOR RELIEF

[FALSE ADVERTISING—VIOLATION OF 15 U.S.C. § 1125(a)]

47. Hansen incorporates by this reference paragraphs 1 through 46, above.

48. Hansen sells beverages in interstate commerce throughout the United States.

49. Living Essentials sells its 5-HOUR *ENERGY®* products in interstate commerce throughout the United States and it competes with Hansen's energy drinks.

50. Living Essentials engages in commercial advertising in interstate commerce across the United States.

51. Living Essentials' advertisements contain false and misleading statements of fact concerning its own product.

52. In addition, Living Essentials' advertisements contain false and misleading statements of fact that the reasonable consumer would readily impute, and/or is likely readily to impute, to energy drinks in general and to Hansen's energy drinks in particular.

53. Living Essentials' false and misleading commercial advertising in interstate commerce violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), in that: it contains false and misleading statements of fact in commercial advertising about its own products and about Hansen's products; those representations are material; they are likely to influence the

purchasing decision of a substantial number of reasonable consumers; those misrepresentations actually deceive or, at a minimum, have the tendency to deceive a substantial segment of the reasonable consumer audience; and, Hansen has been injured, and in the future is likely to continue to be injured, as a result of the misrepresentations, both by the direct diversion of sales from Hansen to Living Essentials and by a lessening of the goodwill associated with Hansen's products.

54. As a direct and proximate result, Hansen has suffered injury and harm and will continue to suffer such harm, including money damages in excess of $75,000, exclusive of interest and costs, the exact amount of which Hansen will prove at trial.

55. Hansen is informed and believes that Living Essentials' false and misleading advertising is willful.

56. Hansen has no adequate remedy at law with respect to Living Essentials' future false and misleading commercial advertising precisely because Hansen is informed and believes that Living Essentials will continue in its same course of conduct unless and until it has been restrained by an order of this Court.

SECOND CLAIM FOR RELIEF

[FALSE ADVERTISING—CALIFORNIA LAW]

57. Hansen incorporates by this reference paragraphs 1 through 56, above.

58. Living Essentials' conduct, as alleged above, violates the misbranding provisions of the Federal Food, Drug and Cosmetic Act, 21 USC §§ 343 and 350, which make the false or misleading labeling of, *inter alia*, dietary and vitamin supplements unlawful and illegal.

59. In addition, Living Essentials' conduct, as alleged above, violates § 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), in that it constitutes an unfair method of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce.

60. Living Essentials' conduct, as alleged above, constitutes false advertising and unfair competition pursuant to the provisions of Business & Professions Code §§ 17200 and

17500.

61. As a direct and proximate result, Hansen has suffered injury and harm and will continue to suffer injury and harm both by the direct diversion of sales from Hansen to Living Essentials and by a lessening of the goodwill associated with Hansen's products.

62. Hansen has no adequate remedy at law with respect to Living Essentials' future false and misleading commercial advertising precisely because Hansen is informed and believes that Living Essentials will continue in its same course of conduct unless and until it has been restrained by an order of this Court.

THIRD CLAIM FOR RELIEF

[TRADE LIBEL]

63. Hansen incorporates by this reference paragraphs 1 through 62, above.

64. By virtue of all of Living Essentials' false and misleading statements as set forth above, and by singling out Hansen's energy drinks by their well-known ingredients, Living Essentials' has engaged in the intentional disparagement of the quality of energy drinks in general and of Hansen's energy drinks in particular, resulting in the money damages that Hansen has suffered.

65. As a direct and proximate result of all of Living Essentials' false and misleading statements as set forth above and also as a direct and proximate result of Living Essentials' trade libel and intentional disparagement of the quality of energy drinks in general and of Hansen's energy drinks in particular, Hansen has suffered money damages in an amount not presently known, but in excess of $75,000, exclusive of interests and costs, and which will be proved at trial.

66. Living Essentials' conduct constitutes an intentional misrepresentation and false, defamatory statements, all with the intention of causing injury to Hansen and is oppressive, fraudulent and malicious conduct as defined in California Civil Code § 3294. Hansen should recover, in addition to its actual damages, exemplary and punitive damages according to proof.

WHEREFORE, Hansen Beverage Company prays for relief against Living Essentials as follows:

1. For preliminary and permanent injunctive relief against Living Essentials pursuant to 15 U.S.C. §§1116 and 1125(a) and Business & Professions Code § 17203;

2. For an award of money damages;

3. For the recovery of Living Essentials' illegal and unjust profits;

4. For three times Hansen's actual money damages;

5. For a finding that Living Essentials' conduct constitutes an exceptional case, such that Hansen is entitled to its attorneys fees in addition to its costs and expenses of suit;

6. For disgorgement of Living Essentials' illegal and unjust profits;

7. For punitive and exemplary damages; and,

8. For such other and further relief as this Court deems just and proper.

DATED: July 1, 2008

SOLOMON WARD SEIDENWURM & SMITH, LLP

By: ______________________
NORMAN L. SMITH
EDWARD J. MCINTYRE
ALISON L. PIVONKA
Attorneys for Hansen Beverage Company

DEMAND FOR JURY

Hansen Beverage Company demands a jury trial of all claims triable by a jury.

DATED: July 1, 2008

SOLOMON WARD SEIDENWURM & SMITH, LLP

By: ______________________
NORMAN L. SMITH
EDWARD J. MCINTYRE
ALISON L. PIVONKA
Attorneys for Hansen Beverage Company

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 152443 - TC

July 01, 2008
10:11:33

Civ Fil Non-Pris
USAO #.: 08CV1166
Judge..: IRMA E GONZALEZ
Amount.: $350.00 CK
Check#.: BC2088

Total-> $350.00

FROM: HANSEN BEVERAGE CO.
VS
INNOVATIONS VENTURES

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
HANSEN BEVERAGE COMPANY, a Delaware corporation

DEFENDANTS
INNOVATION VENTURES, LLC dba LIVING ESSENTIALS, a Michigan corporation

FILED 08 JUL -1 AM 10:09
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

'08 CV 1166 IEG POR

(b) County of Residence of First Listed Plaintiff ______
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant ______
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Norman L. Smith (SBN 106344)
Edward J. McIntyre (SBN 80402)
Solomon Ward Seidenwurm & Smith, LLP
401 B Street, Suite 1200, San Diego, CA 92101
Telephone: (619) 231-0303; facsimile: (619) 231-4755

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- [ ] 1 U.S. Government Plaintiff
- [x] 3 Federal Question (U.S. Government Not a Party)
- [ ] 2 U.S. Government Defendant
- [ ] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability
- [ ] 196 Franchise

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury

PERSONAL INJURY
- [ ] 362 Personal Injury - Med. Malpractice
- [ ] 365 Personal Injury - Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing/ Accommodations
- [ ] 444 Welfare
- [ ] 445 Amer. w/Disabilities - Employment
- [ ] 446 Amer. w/Disabilities - Other
- [ ] 440 Other Civil Rights

PRISONER PETITIONS
- [ ] 510 Motion to Vacate Sentence
Habeas Corpus:
- [ ] 530 General
- [ ] 535 Death Penalty
- [ ] 540 Mandamus & other
- [ ] 550 Civil Rights
- [ ] 555 Prison Condition

FORFEITURE/PENALTY
- [ ] 610 Agriculture
- [ ] 620 Other Food & Drug
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 630 Liquor Laws
- [ ] 640 R.R. & Truck
- [ ] 650 Airline Regs.
- [ ] 660 Occupational Safety/Health
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Mgmt. Relations
- [ ] 730 Labor/Mgmt. Reporting & Disclosure Act
- [ ] 740 Railway Labor Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- [ ] 462 Naturalization Application
- [ ] 463 Habeas Corpus - Alien Detainee
- [ ] 465 Other Immigration Actions

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [x] 840 Trademark

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 480 Consumer Credit
- [ ] 490 Cable/Sat TV
- [ ] 810 Selective Service
- [ ] 850 Securities/Commodities/ Exchange
- [ ] 875 Customer Challenge 12 USC 3410
- [ ] 890 Other Statutory Actions
- [ ] 891 Agricultural Acts
- [ ] 892 Economic Stabilization Act
- [ ] 893 Environmental Matters
- [ ] 894 Energy Allocation Act
- [ ] 895 Freedom of Information Act
- [ ] 900 Appeal of Fee Determination Under Equal Access to Justice
- [ ] 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- [x] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from another district (specify)
- [ ] 6 Multidistrict Litigation
- [ ] 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
15 U.S.C. Section 1125(a)(1)(B)

Brief description of cause:
False advertising in violation of the Lanham Act, Business & Professions Code Sections 17200 and 17500 and Trade Libel

VII. REQUESTED IN COMPLAINT:
- [ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ in excess of $75,000

CHECK YES only if demanded in complaint:
JURY DEMAND: [x] Yes [ ] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE ______ DOCKET NUMBER ______

DATE July 1, 2008
SIGNATURE OF ATTORNEY OF RECORD EDWARD J. MCINTYRE

FOR OFFICE USE ONLY
RECEIPT # 152443 AMOUNT $350 APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

TAC 7/1/08

CSDJS44

AO 120 (Rev.3/04)

TO: **Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450**	**REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK**

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
08cv1166 IEG (POR)	7/1/2008	Southern District of California

PLAINTIFF	DEFENDANT
Hansen Beverage Company	Innovation Ventures, LLC

PATENT OR TRADEMARK NO.	**PATENT OR TRADEMARK NO.**	**PATENT OR TRADEMARK NO.**
1 See Attached	6	11
2	7	12
3	8	13
4	9	14
5	10	15

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading

PATENT OR TRADEMARK NO.	**PATENT OR TRADEMARK NO.**	**PATENT OR TRADEMARK NO.**
1	6	11
2	7	12
3	8	13
4	9	14
5	10	15

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT

CLERK	(BY) DEPUTY CLERK	DATE
W. Samuel Hamrick, Jr.		